

110TH CONGRESS  
1ST SESSION

# S. 2250

To amend title XVIII of the Social Security Act to modernize payments for ambulatory surgical centers under the Medicare Program.

---

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2007

Mr. CRAPO introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To amend title XVIII of the Social Security Act to modernize payments for ambulatory surgical centers under the Medicare Program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ambulatory Surgical  
5       Center Medicare Payment Modernization Act of 2007”.

6       **SEC. 2. MEDICARE PAYMENT FOR AMBULATORY SURGICAL**  
7               **CENTER SERVICES.**

8       (a) IN GENERAL.—Section 1833(i) of the Social Se-  
9       curity Act (42 U.S.C. 1395l(i)) is amended to read as fol-  
10      lows:

1       “(i)(1) Payment shall be made under this part in the  
2 amount specified under paragraph (2) for facility services  
3 furnished to an individual in an ambulatory surgical cen-  
4 ter (meeting the standards specified under section  
5 1832(a)(2)(F)(i)) in connection with any outpatient sur-  
6 gical procedure covered under this part as a hospital out-  
7 patient department service, except for those procedures  
8 that the Secretary designates, in consultation with appro-  
9 priate trade and professional organizations (including  
10 those having direct experience with ambulatory surgical  
11 centers), as posing a significant safety risk or requiring  
12 an overnight stay when performed in ambulatory surgical  
13 centers. Absent an identifiable safety risk specific to the  
14 performance of a particular procedure in an ambulatory  
15 surgical center, the Secretary shall presume that an out-  
16 patient surgical procedure covered under this part as a  
17 hospital outpatient department service does not pose a sig-  
18 nificant safety risk when performed in ambulatory surgical  
19 centers. Not less frequently than once every two years the  
20 Secretary shall review and, may, after public comment,  
21 make appropriate adjustments to this list of procedures  
22 excluded from coverage when performed in ambulatory  
23 surgical centers as the Secretary deems necessary.

24       “(2)(A) Subject to subparagraphs (B), (C), and (D),  
25 the amount of payment to be made under this subsection

1 for facility services furnished to an individual in an ambu-  
 2 latory surgical center in accordance with paragraph (1)  
 3 shall be equal to 75 percent of the fee schedule amount  
 4 determined under paragraph (3)(A) of subsection (t) for  
 5 payment of the same service furnished in hospital out-  
 6 patient departments, as adjusted under paragraphs  
 7 (4)(A), (6), and (15) of such subsection, less a 20 percent  
 8 beneficiary copayment.

9 “(B) For covered ambulatory surgical center services  
 10 furnished on or after January 1, 2008, and before Janu-  
 11 ary 1, 2012, for which the ambulatory surgical center pay-  
 12 ment amount payable under this subsection in 2007 (in  
 13 this subsection referred to as the ‘2007 ASC payment  
 14 amount’) is less than 75 percent of the hospital OPD fee  
 15 schedule amount under subsection (t) in 2007 for the  
 16 same services, the amount of payment under this sub-  
 17 section shall be calculated as follows:

18 “(i) For services furnished during 2008, the  
 19 amount shall be equal to the sum of—

20 “(I) 80 percent of the 2007 ASC payment  
 21 amount, as increased by the market basket per-  
 22 centage increase applicable under subsection  
 23 (t)(3)(C)(iv) for OPD services occurring during  
 24 the fiscal year ending in such year; and

1           “(II) 20 percent of the payment amount  
2           under paragraph (2)(A) for 2008.

3           “(ii) For services furnished during 2009, the  
4           amount shall be equal to the sum of—

5           “(I) 60 percent of the 2007 ASC payment  
6           amount as increased under clause (i)(I) and as  
7           further increased by the market basket percent-  
8           age increase applicable under subsection  
9           (t)(3)(C)(iv) for OPD services occurring during  
10          the fiscal year ending in such year; and

11          “(II) 40 percent of the payment amount  
12          under paragraph (2)(A) for 2009.

13          “(iii) For services furnished during 2010, the  
14          amount shall be equal to the sum of—

15          “(I) 40 percent of the 2007 ASC payment  
16          amount as increased under clauses (i)(I) and  
17          (ii)(I) and as further increased by the market  
18          basket percentage increase applicable under  
19          subsection (t)(3)(C)(iv) for OPD services occur-  
20          ring during the fiscal year ending in such year;  
21          and

22          “(II) 60 percent of the payment amount  
23          under paragraph (2)(A) for 2010.

24          “(iv) For services furnished during 2011, the  
25          amount shall be equal to the sum of—

1           “(I) 20 percent of the 2007 ASC payment  
2           amount as increased under clauses (i)(I), (ii)(I),  
3           and (iii)(I) and as further increased by the  
4           market basket percentage increase applicable  
5           under subsection (t)(3)(C)(iv) for OPD services  
6           occurring during the fiscal year ending in such  
7           year; and

8           “(II) 80 percent of the payment amount  
9           under paragraph (2)(A) for 2011.

10          “(C) For covered ambulatory surgical center services  
11          for which the 2007 ASC payment amount is greater than  
12          75 percent of the hospital OPD fee schedule amount under  
13          subsection (t) in 2007 for the same services, the amount  
14          of payment under this subsection shall be the greater of  
15          the 2007 ASC payment amount or—

16               “(i) for services furnished in 2008, the payment  
17               amount under subparagraph (B)(i);

18               “(ii) for services furnished in 2009, the pay-  
19               ment amount under subparagraph (B)(ii);

20               “(iii) for services furnished in 2010, the pay-  
21               ment amount under subparagraph (B)(iii);

22               “(iv) for services furnished in 2011, the pay-  
23               ment amount under subparagraph (B)(iv); or

24               “(v) in 2012 and subsequent years, the pay-  
25               ment amount under subparagraph (A),

1 but in no case in excess of the then applicable hospital  
 2 OPD fee schedule amount.

3 “(D)(i) Notwithstanding subparagraphs (A),  
 4 (B), and (C), if a facility service furnished to an in-  
 5 dividual in an ambulatory surgical center includes an  
 6 implantable medical device, the amount of payment  
 7 for that service shall be equal to the sum of—

8 “(I) 100 percent of the hospital OPD fee  
 9 schedule amount that the Secretary determines  
 10 is associated with the device; and

11 “(II) 75 percent of non-device-related com-  
 12 ponent of the OPD fee schedule amount;  
 13 less a 20 percent beneficiary copayment.

14 “(ii) For purposes of clause (i), the term  
 15 ‘implantable medical device’ includes devices that—

16 “(I) are an integral and subordinate part  
 17 of the procedure performed;

18 “(II) are used for 1 patient only;

19 “(III) are single use;

20 “(IV) come into contact with human tis-  
 21 sue; and

22 “(V) are surgically implanted or inserted,  
 23 whether or not the device remains with the pa-  
 24 tient when the patient is released from the am-  
 25 bulatory surgical center..”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 1832(a)(2)(F)(i) of such Act (42  
3 U.S.C. 1395k(a)(2)(F)(i)) is amended—

4 (A) by striking “section 1833(i)(1)(A)”  
5 and inserting “section 1833(i)(1)”;

6 (B) by striking “the standard overhead  
7 amount as determined under section  
8 1833(i)(2)(A)” and inserting “the amount de-  
9 termined under section 1833(i)(2)”;

10 (C) by striking all that follows “as full  
11 payment for such services” and inserting “,  
12 or”.

13 (2) Section 1833(a)(1)(G) of such Act (42  
14 U.S.C. 1395l(a)(1)(G)) is amended—

15 (A) by striking “subsection (i)(1)(A)” and  
16 inserting “subsection (i)(1)”;

17 (B) by striking “for services furnished be-  
18 ginning” and all that follows through “sub-  
19 section (i)(2)(D)”;

20 (C) by striking “such revised payment sys-  
21 tem” and inserting “under subsection (i)(2)”.

22 (3) Section 1833(a)(4) of such Act (42 U.S.C.  
23 1395l(a)(4)) is amended—

24 (A) by striking “section 1833(i)(1)(A)”  
25 and inserting “subsection (i)(1)”;

1 (B) by striking “paragraph (2) or (3) of  
 2 subsection (i)” and inserting “subsection  
 3 (i)(1)”.

4 (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to ambulatory surgical center serv-  
 6 ices furnished on or after January 1, 2008.

7 **SEC. 3. CLARIFYING STATE LICENSURE AUTHORITY.**

8 (a) IN GENERAL.—Section 1832(a)(2)(F)(i) of the  
 9 Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i)) is  
 10 amended by inserting “, except that such standards shall  
 11 not preclude the provision of surgical services to individ-  
 12 uals not covered under the program under this part if such  
 13 services are permitted to be performed in such a center  
 14 under applicable State licensure laws” after “performed  
 15 in an ambulatory surgical center (which meets health,  
 16 safety, and other standards specified by the Secretary in  
 17 regulations”.

18 (b) EFFECTIVE DATE.—The amendment made by  
 19 this section shall take effect on the date of the enactment  
 20 of this Act.

○